IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

CWP No.509 of 2005

Date of decision 16.7.2007

H.P.S.E.B. and another Petitioners

Vs.

Harmesh Lal Respondents

Coram:

The Hon'ble Mr. Justice Rajiv Sharma, Judge.

Whether approved for reporting?[1] No.

For the Petitioner: Mr.Shrawan Dogra, Advocate.

For the Respondent: Mrs.Devyani Sharma, Advocate.

Rajiv Sharma, J.

A challenge has been laid in this petition to the Award dated 26.2.2005 passed by the Labour Court-cum- Industrial Tribunal, Dharamshala in Reference No.171/2001 (RBT No.114/04). The brief facts necessary for the adjudication of this petition are that the State Government had made the following reference to the Labour Court:

> "Whether the plea of the Executive Engineer, HPSEB Division Palampur District Kangra, H.P. that Shri Harmesh Lal son of Sh.Bachna Ram workman had left the job of his own accord w.e.f. 3.3.1989 due to absenteeism based on facts and justified, if not, to what seniority service benefit and relief Shri Harmesh Lal son of Sh.Bachna Ram workman is entitled to."

In sequel to the reference made by the State Government, the workman had filed a statement of claim and the employer had also filed

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[1] Whether reporter of local papers are allowed to see the judgment ? No.

reply to the same before the Labour Court. Primarily the workman had contended in his statement of claim that he was engaged in the month of May, 1985 initially as a Peon and thereafter he was assigned the duties of clerk as meter recorder-cum-clerk and he was retrenched without following the mandatory provision of clause 14 of the Standing Orders framed by the Board.

Mr.Shrawan Dogra had strenuously argued that the reference made by the State Government in the year 2001 was stale and the Labour Court could not answer the reference on merits. Mrs.Devyani Sharma had supported the award dated 26.2.2005.

I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

The workman was engaged in the month of May, 1985 and was retrenched on 1.1.1989. The workman was not issued any notice as per the clause 14 of the Certified Standing Orders framed by the Board. RW-1 Sh.Vinod Kumar Patial had admitted in his cross-examination that the Himachal Pradesh State Electricity Board had framed the Certified Standing Orders and at the relevant time they were applicable to all the workmen. Accordingly the finding recorded by the Labour Court that the services of the workman were retrenched without following sub clause (2) of Clause 14 of the Standing Orders of H.P.S.E.B. framed under the Industrial Employment (Standing Orders) Act, 1946 is liable to be upheld. The Labour Court had not accepted the plea of employer that the workman had abandoned the job. The plea of abandonment is a plea of fact and was required to be proved by the employer in accordance with law. The employer had not placed any material on record to even

remotely suggest that the workman had abandoned his job. The Labour Court had gone into the question of delay and laches and had rightly relied upon the judgment of the Apex Court titled **Sapan Kumar Pandit vs. U.P.State Electricity Board,** 2001, LLR 900. The Labour Court while granting the relief had also taken into consideration the plea of delay and laches and it was for that reason that no back wages have been awarded but the benefit of reinstatement with seniority has been granted.

Accordingly there is no merit in the writ petition and the same is dismissed with no order as to costs.

July 16,2007 (g) **(Rajiv Sharma), J.**